

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

GONG SIC OR,

Appellant,

vs.

EDWARD WHITE, as Commissioner of
Immigration for the Port of San Fran-
cisco,

Appellee.

BRIEF OF APPELLEE

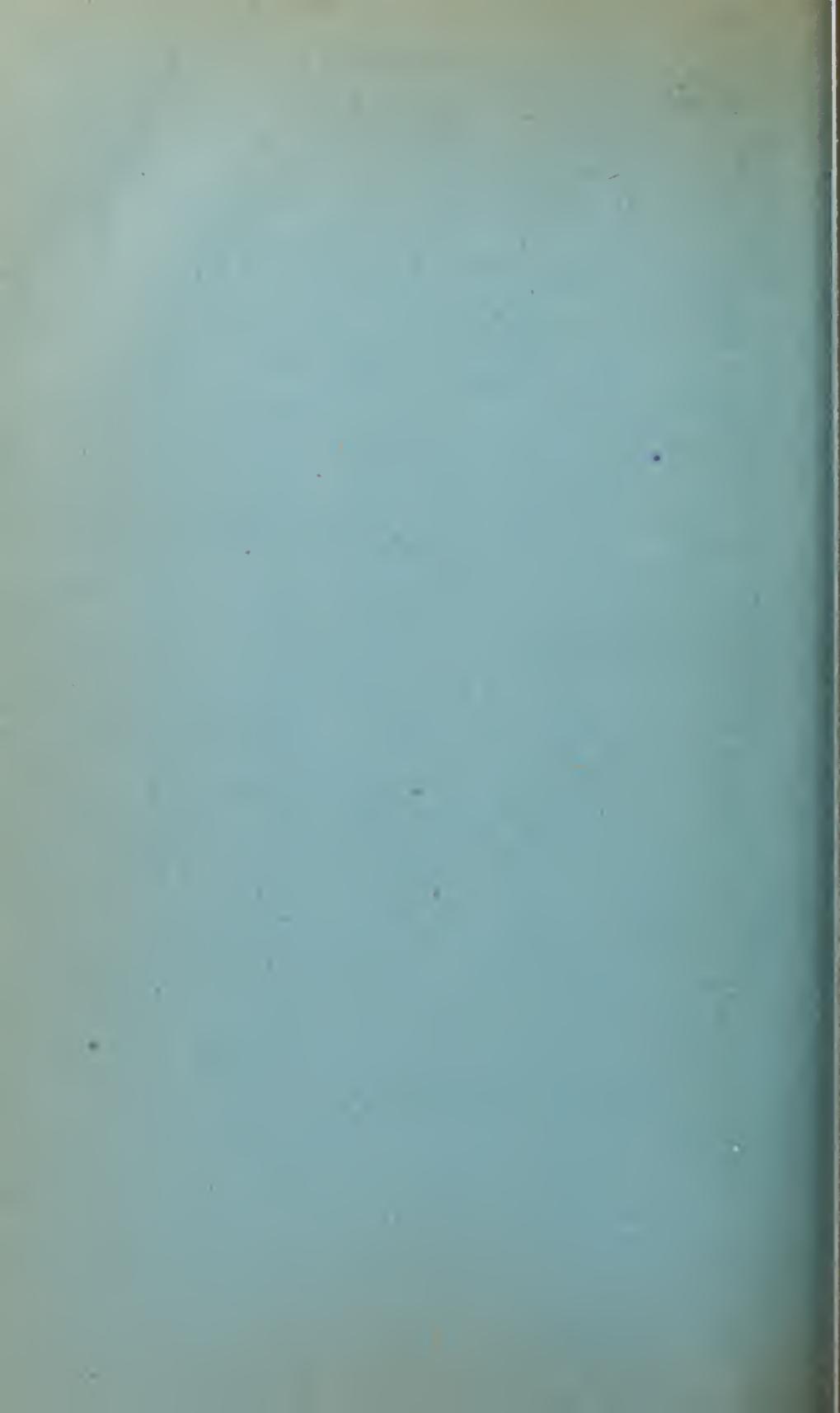
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United States Attorney,

BEN F. GEIS,

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Attorneys for Appellee.



No. 3774

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STATEMENT OF FACTS

Gong Sic Or, appellant herein, arrived at the Port of San Francisco on the S. S. "Tjikenbang" November 26, 1920 (Ex. A, p. 39), and thereupon made application to enter the United States as a citizen thereof, claiming to be the foreign-born son of Bing Gon, a citizen, who accompanied him (Ex. B, p. 44).

His application for admission was denied by a board of special inquiry and upon appeal to the Secretary of Labor was dismissed.

Thereafter petition for writ of habeas corpus (Tr. 2) was filed in the District Court and order to show cause issued (Tr. 8). A demurrer to the petition was filed (Tr. 9) which was sustained and the petition denied (Tr. 11). It is from the order and judgment of the Court below sustaining the demurrer and denying the petition that this appeal is taken.

ARGUMENT.

The usual allegations of unfairness in the conduct of the hearing by the immigration officials and abuse of discretion on the part of said officials in reaching their conclusions appear in the petition.

DOES THE RECORD IN THE CASE SHOW THAT THE HEARING WAS MANIFESTLY UNFAIR?

It appears from the record that Gong Sic Or arrived at the Port of San Francisco November 26, 1920 (Ex. A, p. 39), accompanied by his alleged father Bing Gon (Ex. B, p. 44), and thereupon made application to enter the United States as a citizen thereof, and in support of his said application presented the affidavit of his alleged father Bing Gon, to which was attached the photographs of the applicant and his alleged father (Ex. A, p. 2), together with the affidavit of Gong Jack, bear-

ing a photograph of affiant (Ex. A, p. 1), who was to appear as a witness in the case.

On December 27, 1920, the testimony of Bing Gon (Ex. A, p. 19), Gong Sic Or (Ex. A, p. 13) and Gong Jack (Ex. A, p. 8) was taken in shorthand before a board of special inquiry and transcribed in typewriting and made a part of the immigration record.

On December 28, 1920, Gong Sic Or was further examined before the board and his testimony made a part of the record (Ex. A, p. 24).

At the conclusion of the hearing, the board of special inquiry, not being satisfied that the relationship claimed had been satisfactorily established, voted to defer for a period of ten days for the production of additional evidence (Ex. A, p. 20), and the attorney of record was so notified in writing (Ex. A, p. 26).

On January 3, 1921, the attorney of record advised in writing that "no further evidence will be introduced in the above-named case. Therefore I ask that final action be taken." (Ex. A, p. 28).

On January 11, 1921, the board of special inquiry, after a careful consideration of the evidence (Ex. A, p. 32), found Gong Sic Or not to be the son of Gong Bing Gon, and voted that he be denied admission and so notified the applicant and advised him of his right of appeal (Ex. A, p. 29).

On June 12, 1921, the attorney of record and

the Consul General for China were notified of the board's excluding decision and of their right of appeal (Ex. A, pp. 34, 35).

Notice of appeal was filed January 13, 1921 (Ex. A, p. 36), and the attorney of record was given full opportunity to review the entire record, including exhibits, as appears from his receipt therefor (Ex. A, p. 38).

The entire record, including exhibits, was forwarded to the Secretary of Labor on appeal February 4, 1921 (Ex. A, p. 40), and appellant was represented before the Department in Washington, D. C., by Messrs. Bouve & Parker, attorneys at law (Exhibit A, pp. "A" and 41), who filed a brief in his behalf (Ex. A, p. 45) and who were also granted an oral hearing before the Secretary (Ex. A, p. 46).

The Secretary of Labor, after a careful review of all the evidence, dismissed the appeal and directed the applicant be deported (Ex. A, p. 47).

We have carefully examined the record in this case and failed to find anything therein justifying the charge of unfairness. Appellant was given an opportunity to present any and all witnesses he desired and all witnesses so presented were fully and fairly heard. Every jurisdictional step necessary to a fair hearing under the rules and regulations of the Department of Labor was taken.

The petition herein does not show nor does an inspection of the immigration records disclose

wherein petitioner was denied any substantial right to which he was entitled under either the laws or the rules and regulations in such cases made and provided. In the absence of such a showing the petition should be denied.

Jeung Bock Hong vs. White, 258 Fed. 23.

Chin Yow vs. United States, 208 U. S. 8.

DOES AN INSPECTION OF THE IMMIGRATION RECORDS HEREIN DISCLOSE A MANIFEST ABUSE OF DISCRETION?

The decision of the board of special inquiry denying the application of appellant is based upon discrepancies appearing in the testimony of Gong Sic Or and his alleged father Gong Bing Gon.

These discrepancies are fully set out in the immigration record commencing at page 32 of Exhibit A, with marginal notes showing the Exhibit and page where the testimony there referred to is to be found.

The reasons assigned for the dismissal of the appeal by the Secretary are fully set forth on pages 47 and 46 of Exhibit A.

It appears therefrom that the appeal was dismissed by the Secretary on March 1, 1921, after which an oral hearing was had and the previous order affirmed March 3, 1921.

There is nothing in the finding of the Secretary which in our opinion justifies the conclusion of counsel for appellant that the Secretary of Labor

swept aside as immaterial or inconsequential all the discrepancies pointed out by the board and proceeded to deny the applicant's right to enter, upon the grounds that he knew nothing of an epidemic testified to by the alleged father.

Bing Gon, the alleged father, testified that he had made two trips to China; that he departed on his second trip May 10, 1919, on the S. S. "Nanking" and returned with the applicant (Ex. A, p. 19); that he did not do anything while in China on this visit; that he visited Canton and Hongkong but only stayed a couple of days (Ex. A, p. 18); that the applicant was at home awaiting him when he returned from the United States and did not return to school at all (Ex. A, p. 17).

Gong Sic Or testifies that his alleged father, after his return to China, spent most of his time visiting at home; that he made several trips to Hongkong and Canton, when he would be away about ten days (Ex. A, p. 12).

If appellant is the son of Bing Gon, as claimed, and was at home during the entire time his father was in China on his last visit, it is strange that he should know nothing of a serious epidemic which took place in his home village, during which many of the inhabitants died, and concerning which his father has testified.

Because of the discrepancies appearing in the record, the Secretary of Labor was called upon to exercise a discretion as to whether or not the appli-

cant was entitled to admission. In the exercise of this discretion, which is committed to him by the statute, he has decided that appellant has not satisfactorily established his claim of relationship to his alleged father and therefore is not entitled to admission as a citizen of the United States. This opinion seems to have been honestly and impartially arrived at and does not in our opinion disclose any abuse of that discretion justifying the interference of the Court. In the recent case of *Jeung Bock Hong vs. White*, 258 Fed. 23, this Court speaking through his Honor, Morrow, Circuit Judge, said:

“The discrepancies in the testimony appear to be unimportant but if taking them altogether the executive officers of the Department found that the evidence in support of the petitioner’s right to land and enter the United States was so impaired as to render it unsatisfactory, the Court is not authorized to reverse that conclusion.”

“We cannot say that the proceedings were manifestly unfair or that the actions of the executive officers were such as to prevent a fair investigation or that there was a manifest abuse of the discretion committed to them by the statute. In such cases, the order of the executive officers within the authority of the statute is final.”

In *Quock Ting vs. U. S.*, 140 U. S. 417, 420, 11 Sup. Ct. 733, 851, the court said.

“Undoubtedly, as a general rule, positive testimony as to a particular fact, uncontra-

dicted by any one, should control the decision of the court; but that rule admits of many exceptions. There may be such an inherent improbability in the statements of a witness as to induce the court or jury to disregard his evidence, even in the absence of any direct conflicting testimony. He may be contradicted by the facts he states as completely as by direct adverse testimony; and there may be so many omissions in his account of particular transactions, or of his own conduct, as to discredit his whole story. His manner, too, of testifying may give rise to doubts of his sincerity, and create the impression that he is giving a wrong coloring to material facts. All these things may properly be considered in determining the weight which should be given to his statements, although there be no adverse verbal testimony adduced."

In conclusion we submit that the record in this case does not show that the hearing afforded the appellant herein was unfair or that there was a manifest abuse of discretion and therefore confidently urge and believe that the judgment of the Court below should be affirmed.

Respectfully submitted,

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Attorneys for Appellee.